

**CITY OF BIGGS**  
**PLANNING STAFF REPORT**

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TO: Honorable Mayor and Members of the City Council

DATE: April 18, 2011

FROM: Scott Friend, AICP, City Planner

THROUGH: Pete Carr, City Administrator

SUBJECT: Planting / Landscaping in Planter Strips and City Rights-of-Way.

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**SUMMARY**

Working at the direction of the City Administrator, planning staff has been requested to initiate a conversation with the City Council to discuss and receive direction on how staff should work with landowners adjacent to planting or mow-strips when disagreement exists on the type of landscaping in planting strips and/or adjacent property owners are unwilling to maintain or replant planting strip landscaping. Specifically, staff seeks direction from the City Council regarding how staff should remedy existing situations whereby landscaping and/or trees are missing from street planting strips.

**BACKGROUND / DISCUSSION**

Various streets in the City of Biggs provide for a planting-strip or "mow"-strip located between the back-edge of the curb and the front-edge of the detached sidewalk. The engineering cross-section for streets having landscape strips identifies such planting areas as generally having four (4) feet in width. Planting strips are located entirely within the public street right-of-way of the adjacent street. While abutting property owners are required to maintain the landscaping in this area, they do not pay property taxes on this area and the planting-strip is not considered a part of their property for any fee or calculation purpose (e.g. calculation of lot area; figuring of lot coverage; establishment of property taxes; etc.).

It is currently, and has been historically, the policy of the City of Biggs that property owners located adjacent to or abutting landscape strips maintain the landscaping and trees in these areas. This policy is supported by the contents of the contents of the California Streets and Highways Code (SHC Sections 1800 and 8300 et. seq.) which allows cities to require maintenance of the planting area by adjacent property owners and is supported by Section 6.25.020 (f) and (g) of the Biggs Municipal Code (BMC).

Sections 6.25.020 (f) and (g) of Chapter 6.25 Health and Safety and Neighborhood Nuisance Abatement, specifically provide that failure to install landscaping and failure to maintain

landscaping are violations of the City Code. Additionally, Section 6.25.020 (f) specifically establishes that *“dead vegetation, dirt and base rock are not considered acceptable maintenance”* (or landscaping) and Section 6.25.020 (g) requires that property owners *“maintain and replace any trees and landscaping in mow strips”*.

Section 9.15 of the BMC establishes the City’s regulations regarding trees and section 14.10 provides for a definition of landscaping. Section 9.15, Trees of Title 9 of the City of Biggs Municipal Code establishes the City’s rules and regulations dealing with trees. Sections 9.15.080, -090, and -.100 of the Code are as follow:

**9.15.080 Tree care, planting, removing, and replacement – Permit required.**

It shall be unlawful and it is hereby prohibited for any person other than the superintendent or his duly authorized agent or deputy to cut, trim, prune, spray, brace, plant, move, remove, or replace any tree in any public street within the city, or to cause the same to be done, unless and until a written permit so to do shall have first been obtained from the superintendent..... [Ord. 135 § 8, 1961]

**9.15.090 Persons authorized.**

No person other than an owner or a public utility may do any act for which a permit is required under BMC 9.15.080 except a person whose principal business is tree surgery, trimming or maintenance and who, in the opinion of the superintendent, is qualified for such business, and who has obtained a permit to carry on such business in the city from the city superintendent. [Ord. 135 § 9, 1961]

**9.15.100 Damaging trees.**

It shall be unlawful for any person to break, injure, deface, mutilate, kill, or destroy any tree or set fire or permit any fire to burn where such fire or the heat thereof will injure any portion of any tree in any public street in the city, nor shall any person place, apply, attach, or keep attached to any such tree or to the guard or stake intended for the protection thereof any wire, rope (other than one used to support a young or broken tree), sign, paint, or any other substance, structure, thing or device of any kind or nature whatsoever, without having first obtained a written permit from the superintendent so to do.... [Ord. 135 § 10, 1961]

Title 9 does not provide for a definition of the term “Landscaping” nor does Title 9 specifically identify that trees must be planted within the landscape strip. Title 14, Zoning provides the following definition for the term “Landscaping”:

**14.10.520 Landscaping.**

“Landscaping” means the improvement of any real property through the use of shrubs, hedges, trees, grass or other plants, decorative or functional fences, railings, statues, curbs, and similar structures to enhance the appearance of the property, reduce soil erosion, or provide screening for light and sound. [Ord. 320 § 1, 1999]

City policy requires that property owners, whose property abuts a City right-of-way where a planting-strip occurs, maintain the landscaping within the planting strip in front of the property. This landscaping has generally consisted of turf with street trees for shade and aesthetic value.

The City has also required that in any location where a street tree was removed from a planting strip that the tree shall be replaced with a tree from the City’s approved street-tree list in the same location. It is believed that this policy was utilized to maintain the desired visual and aesthetic character of the City’s streets and to address the impractical maintenance burden that would be placed upon the City if the City was responsible for maintenance activities where planter strips are utilized.

It is noted herein that other jurisdictions which utilize planter strips as part of their street cross-sections, almost universally require that such areas be maintained by a homeowners association or the adjoining property owner.

### **STAFF RECOMMENDATION**

Staff recommends that the City continue to require planting-strip areas to be maintained by the abutting property owner and that the City actively pursue, via the code enforcement process, violations of the City Code where landscape is removed without approval or where maintenance activities or adequate landscaping are not present.

### ***Attachments:***

- Attachment A: BMC Section 9.15 - Trees

## Chapter 9.15

### TREES

#### Sections:

- 9.15.010 Purpose.
- 9.15.020 Definitions.
- 9.15.030 Number.
- 9.15.040 Enforcing authority.
- 9.15.050 Master tree list.
- 9.15.060 Jurisdiction and control.
- 9.15.070 Prohibited trees.
- 9.15.080 Tree care, planting, removing, and replacement – Permit required.
- 9.15.090 Persons authorized.
- 9.15.100 Damaging trees.
- 9.15.110 Hazards.
- 9.15.120 Appeals.
- 9.15.130 Penalties for violation – Enumerated.

#### 9.15.010 Purpose.

It is for the best interests of the city of Biggs and of the citizens and public thereof that a comprehensive plan for the planting and maintenance of trees in or which may overhang public streets within said city should be developed and established and that this chapter is adopted, therefore, for the purpose of developing and providing for such a plan and program and for the purpose of establishing rules and regulations relating to the planting, care and maintenance of such trees. [Ord. 135 § 1, 1961]

#### 9.15.020 Definitions.

(1) "Person," as used in this chapter, includes an individual, a firm, an association, a corporation, a copartnership, and the lessees, trustees, receivers, agents, servants, and employees of any such person.

(2) "City" means the city of Biggs situated in the county of Butte, California.

(3) "Park superintendent" or "superintendent" means the superintendent of the city of Biggs.

(4) "Public streets" or "streets" include all roads, streets, avenues, boulevards, alleys, parkways, and public rights-of-way, or any portion thereof, of the city.

(5) "Owner" includes the legal owner of real property fronting on any street of the city, and any lessee of such owner. [Ord. 135 § 2, 1961]

**9.15.030 Number.**

Wherever used in this chapter, the singular number includes the plural and the plural includes the singular. [Ord. 135 § 3, 1961]

**9.15.040 Enforcing authority.**

The superintendent, or his duly authorized representative, shall be charged with the enforcement of this chapter. [Ord. 135 § 4, 1961]

**9.15.050 Master tree list.**

(1) The park superintendent is hereby charged with the duty of promptly determining the types and species of trees suitable and desirable for planting and the areas in which and conditions under which such trees shall be planted in or which may overhang the public streets within the city. Such determination shall be made by the superintendent who may consult with those familiar with the subject of such plantings, such as landscape architects, arborists, nurserymen and park executives. When such determination has been made the superintendent shall report his findings in writing to the city council. When approved by the city council said report shall be known as the master tree list, shall be placed on file in the office of the city clerk, and shall thereafter be the official determination of the superintendent. Revisions or changes in said master tree list may be made from time to time by the superintendent, in the manner described hereinabove for the development, approval and filing of the original master tree list.

(2) All trees hereafter planted in or which may overhang the public streets of the city must be on the master tree list, unless a written permit from the superintendent shall have first been obtained to plant a tree not on said list. Such permit may be granted by the superintendent only upon his obtaining approval therefor from the city council. [Ord. 135 § 5, 1961]

**9.15.060 Jurisdiction and control.**

The superintendent shall have jurisdiction and control of the planting, setting out, location and placement of all trees in the public streets of the city, and shall likewise have supervision, direction, and control of the care, trimming, removal, relocation and replacement thereof. [Ord. 135 § 6, 1961]

**9.15.070 Prohibited trees.**

Some types of trees, upon maturing, instead of becoming assets to the community become liabilities due to structural weaknesses, disease or insect susceptibility, short life, destructive root systems, and rank growing branches requiring excessive maintenance. Due to one or more of these characteristics, it shall be unlawful to plant the following trees in or where they may overhang any public street:

- (1) Ash;
- (2) Acacia;
- (3) Black walnut;
- (4) Eucalyptus;
- (5) Willow;
- (6) Palm;
- (7) Poplar - Cottonwood;
- (8) Tree of Heaven;
- (9) Conifers;
- (10) Elm, American or European. [Ord. 135 § 7, 1961]

**9.15.080 Tree care, planting, removing, and replacement - Permit required.**

It shall be unlawful and it is hereby prohibited for any person other than the superintendent or his duly authorized agent or deputy to cut, trim, prune, spray, brace, plant, move, remove, or replace any tree in any public street within the city, or to cause the same to be done, unless and until a written permit so to do shall have first been obtained from the superintendent. Any such permit may be declared void by the superintendent if its terms are violated. [Ord. 135 § 8, 1961]

**9.15.090 Persons authorized.**

No person other than an owner or a public utility may do any act for which a permit is required under BMC 9.15.080 except a person whose principal business is tree surgery, trimming or maintenance and who, in the opinion of the superintendent, is qualified for such business, and who has obtained a permit to carry on such business in the city from the city superintendent. Permits issued pursuant to this section may be granted for a period of one year from the date of issuance. [Ord. 135 § 9, 1961]

**9.15.100 Damaging trees.**

It shall be unlawful for any person to break, injure, deface, mutilate, kill, or destroy any tree or set fire or permit any fire to burn where such fire or

#### 9.15.110

the heat thereof will injure any portion of any tree in any public street in the city, nor shall any person place, apply, attach, or keep attached to any such tree or to the guard or stake intended for the protection thereof any wire, rope (other than one used to support a young or broken tree), sign, paint, or any other substance, structure, thing or device of any kind or nature whatsoever, without having first obtained a written permit from the superintendent so to do. [Ord. 135 § 10, 1961]

#### 9.15.110 Hazards.

(1) The superintendent may inspect any tree adjacent to or overhanging any public street in the city to determine whether the same or any portion thereof is in such a condition as to constitute a hazard or impediment to the progress or vision of anyone traveling on such public street. Any tree or part thereof growing upon private property but overhanging or interfering with the use of any street that in the opinion of the superintendent endangers the life, health, safety, or property of the public shall be declared a public nuisance. If the owner of such private property does not correct or remove such nuisance within 10 days after receipt of written notice thereof from the superintendent, the superintendent shall cause the nuisance to be corrected or removed and the cost shall be assessed to such owner.

(2) Nothing contained herein shall be deemed to impose any liability upon the city, its officers, or employees, nor to relieve the owner of any private property from the duty to keep any tree upon his property or under his control in such a condition as to prevent it from constituting a public nuisance as hereinabove defined. [Ord. 135 § 11, 1961]

#### 9.15.120 Appeals.

Any person aggrieved by any act or determination of the superintendent in the exercise of the authority herein granted shall have the right of appeal to the city council of the city, whose decision, after public hearing of said matter, shall be final and conclusive. [Ord. 135 § 12, 1961]

#### 9.15.130 Penalties for violation – Enumerated.

(1) Civil Liability. Any person who violates any provision of this chapter is liable in a civil action brought by the city attorney on behalf of the city in the amount of the appraised value of the tree

(as determined by professional appraisal), but with a minimum amount of \$500.00 for each such violation.

(2) Joint and Several Liability – Multiple Responsible Parties. If two or more persons are responsible for any violation of the provisions of this chapter, they shall be jointly and severally liable for the civil penalty set forth in subsection (1) of this section.

(3) Disposition of Amounts Recovered. Amounts recovered under this section shall be deposited into a fund carried upon the financial records of the city which shall be used exclusively for the planting of trees in public places in the city and for tree-related educational projects or programs.

(4) Violation Punishable as Misdemeanor. Any person violating any of the provisions of this chapter or failing to comply with them shall be deemed guilty of a misdemeanor and shall be punishable as such. [Ord. 345 § 2, 2003]